# **EX PARTE OR LATE FILED**

# HOGAN & HARTSON



JUL 24 1998

TEMPLAL TOMMUNICATIONS COMMISSION

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July 24, 1998

#### BY HAND DELIVERY

Ms. Magalie R. Salas Secretary Federal Communications Commission 1919 M Street, N.W. Washington, D.C. 20554

Re: Ex Parte

PR Docket No. 92-235

Dear Ms. Salas:

Attached for filing please find an original and one copy of letters from Robert Darbelnet, President and CEO of the American Automobile Association (AAA), to Chairman William E. Kennard, Commissioner Susan Ness, Commissioner Harold Furchtgott-Roth, Commissioner Michael K. Powell, and Commissioner Gloria Tristani. Attached to each letter was the attached "Myths and Realities" Paper prepared by AAA.

Please do not hesitate to call should you have any questions regarding this filing.

Steven F. Morris

No. of Copies rec'd

## HOGAN & HARTSON L.L.P.

Ms. Magalie R. Salas July 23, 1998 Page 2

### **Enclosures**

cc: Chairman William Kennard

Commissioner Susan Ness

Commissioner Harold Furchtgott-Roth

Commissioner Michael Powell Commissioner Gloria Tristani

Ari Fitzgerald David Siddall Paul Misener Peter Tenhula Karen Gulick



July 23, 1998

1000 AAA Drive Heathrow, FL 32746-5063 407/444-7111 Fax 407/444-7120

Chairman William E. Kennard Room 814 1919 M Street, NW Washington, D.C. 20554

RE: PR Docket No. 92-235

Dear Chairman Kennard:

As you know, AAA has filed a petition for reconsideration in the pending private radio "refarming" proceeding, PR Docket No. 92-235, seeking "quasi-public safety" status in order to protect its emergency road service frequencies from interference. In that regard, I would like to direct your attention to the attached "Myths and Realities" Paper submitted today to the FCC.

The attached paper seeks to respond to erroneous concerns or assumptions raised by FCC staff during the course of meetings with AAA. I am particularly troubled that some FCC staff have asked whether AAA's efforts to protect its frequencies from interference merely represent an effort to preserve its frequency coordination revenues or the role of its frequency coordinator.

I would like to personally set the record straight on this issue, because protecting the frequency coordination process or AAA's role as a frequency coordinator has had absolutely no bearing on AAA's efforts in this proceeding. As stated in the attached paper, AAA's frequency coordination expenses have always exceeded revenues, and 1998 will be no exception. Specifically, anticipated revenues for 1998 are \$24,000, whereas expenses are expected to exceed \$65,000.

AAA's primary objective is, and will remain, ensuring highway safety and providing a full range of travel related services to consumers. AAA uses its few frequencies -- only 43 of the 5,140 in the Industrial/Business Pool frequencies -- solely to provide emergency services. AAA is seeking to protect users of the Auto Emergency frequencies, not its frequency coordination or its frequency coordinator, in order to provide better service during traffic incidents, natural disasters, and other emergencies.

Indeed, I am disturbed that while the FCC has taken steps to ensure that wireless subscribers will have improved access to public safety services through enhanced 911, the FCC's actions in this proceeding have already degraded the quality of auto emergency services for more than 40 million members. A large percentage of motorists rely on AAA every day to provide emergency road service, and AAA responds to 80,000 calls per day, one-third of which involve immediate threat to life or property. We need the FCC's help to ensure the best possible service to these consumers, not a decreasing level of service due to interference concerns. (In the meantime, AAA has and will continue to support legislative efforts to improve wireless subscribers' access to enhanced 911 service, working through the COMCARE Alliance.)

I urge you to review the attached paper submitted by AAA and to call me if you have any remaining concerns regarding AAA's petition or its need for additional frequency protection.

Sincerely.

Robert L. Darbelnet President and CEO



July 23, 1998

1000 AAA Drive Heathrow, FL 32746-5063 407/444-7111 Fax 407/444-7120

Commissioner Susan Ness Room 832 1919 M Street, NW Washington, D.C. 20554

RE: PR Docket No. 92-235

Dear Commissioner Ness:

As you know, AAA has filed a petition for reconsideration in the pending private radio "refarming" proceeding, PR Docket No. 92-235, seeking "quasi-public safety" status in order to protect its emergency road service frequencies from interference. In that regard, I would like to direct your attention to the attached "Myths and Realities" Paper submitted today to the FCC.

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Robert L. Darbelnet President and CEO



July 23, 1998

1000 AAA Drive Heathrow, FL 32746-5063 407/444-7111 Fax 407/444-7120

Commissioner Harold Furchtgott-Roth Room 802 1919 M Street, NW Washington, D.C. 20554

RE: PR Docket No. 92-235

Dear Commissioner Furchtgott-Roth:

As you know, AAA has filed a petition for reconsideration in the pending private radio "refarming" proceeding, PR Docket No. 92-235, seeking "quasi-public safety" status in order to protect its emergency road service frequencies from interference. In that regard, I would like to direct your attention to the attached "Myths and Realities" Paper submitted today to the FCC.

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Commissioner Harold Furchtgott-Roth July 23, 1998 Page 2

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Sincerely,

Robert L. Darbelnet

President and CEO



July 23, 1998

1000 AAA Drive Heathrow, FL 32746-5063 407/444-7111 Fax 407/444-7120

Commissioner Michael K. Powell Room 844 1919 M Street, NW Washington, D.C. 20554

RE: PR Docket No. 92-235

Dear Commissioner Powell:

Thank you for your recent response to my letter of May 22, 1998 regarding AAA's concerns about the FCC's "refarming" order. AAA shares your interest in seeking to ensure reliable emergency communications throughout the United States. It therefore is disturbing to AAA that while the FCC has taken steps to ensure that wireless subscribers will have improved access to public safety services through enhanced 911, the FCC's actions in the "refarming" proceeding have already degraded the quality of auto emergency services for more than 40 million members. A large percentage of motorists rely on AAA every day to provide emergency road service, and AAA responds to 80,000 calls per day, one-third of which involve immediate threat to life or property. We need the FCC's help to ensure the best possible service to these consumers, not a decreasing level of service due to interference concerns. (In the meantime, AAA has and will continue to support legislative efforts to improve wireless subscribers' access to enhanced 911 service, working through the COMCARE Alliance.)

As you know, AAA filed a petition for reconsideration of the Commission's Second Report and Order in the "refarming" proceeding seeking "quasi-public safety" status in order to protect its emergency road service frequencies from interference. In that regard, I would like to direct your attention to the attached "Myths and Realities" Paper prepared by AAA. This paper seeks to respond to erroneous concerns or assumptions raised by FCC staff during the course of meetings with AAA.

I am particularly troubled that some FCC staff have asked whether AAA's efforts to protect its frequencies from interference merely represent an effort to preserve its frequency coordination revenues or the role of its frequency coordinator. I would like to personally set the record straight on this issue, because protecting the frequency coordination process or AAA's role as a frequency coordinator has had absolutely no bearing on AAA's efforts in this proceeding. As stated in the attached paper, AAA's frequency coordination expenses have always exceeded revenues, and 1998 will be no exception. Specifically, anticipated revenues for 1998 are \$24,000, whereas expenses are expected to exceed \$65,000.

Likewise, AAA handles very few coordinations compared to major coordinators such as PCIA. Thus far this year, AAA has performed 65 frequency coordinations, compared to a full 8,000 for PCIA. AAA has no interest in expanding its frequency coordination role, or turning this function into a profit center. Moreover, AAA's one frequency coordinator handles a full range of communications responsibilities, and will continue to do so regardless of the outcome of this proceeding.

AAA's primary objective is, and will remain, ensuring highway safety and providing a full range of travel related services to consumers. AAA uses its few frequencies -- only 43 of the 5,140 in the Industrial/Business Pool frequencies -- solely to provide emergency services. AAA is seeking to protect users of the Auto Emergency frequencies, not its frequency coordination or its frequency coordinator, in order to provide better service during traffic incidents, natural disasters, and other emergencies.

I urge you to review the attached paper submitted by AAA and to call me if you have any remaining concerns regarding AAA's petition or its need for additional frequency protection.

Sincerely,

Robert L. Darbelnet

President and CEO



July 23, 1998

1000 AAA Drive Heathrow, FL 32746-5063 407/444-7111 Fax 407/444-7120

Commissioner Gloria Tristani Room 826 1919 M Street, NW Washington, D.C. 20554

RE: PR Docket No. 92-235

Dear Commissioner Tristani:

As you know, AAA has filed a petition for reconsideration in the pending private radio "refarming" proceeding, PR Docket No. 92-235, seeking "quasi-public safety" status in order to protect its emergency road service frequencies from interference. In that regard, I would like to direct your attention to the attached "Myths and Realities" Paper submitted today to the FCC.

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l urge you to review the attached paper submitted by AAA and to call me if you have any remaining concerns regarding AAA's petition or its need for additional frequency protection.

Sincerely,

Robert L. Darbelnet

President and CEO

#### AAA's Petition for Reconsideration in PR Docket No. 92-235

#### "MYTHS AND REALITIES" PAPER

The American Automobile Association ("AAA") would like to address several "myths" that have been raised at the Federal Communications Commission ("FCC") concerning AAA's petition for reconsideration in the pending private radio "refarming" proceeding, PR Docket No. 92-235. This paper is submitted to set the record straight regarding AAA's critical need for additional frequency protection to ensure high quality, expeditious service to the more than 40 million Americans and local public safety agencies who rely upon AAA during traffic incidents, auto emergencies and natural disasters every day.

• Myth One: "AAA is seeking "quasi public safety" status merely to protect its frequency coordination revenues and to avoid competition in providing this service.

**Reality:** AAA actually *loses* a significant amount of money every year in providing frequency coordination services to its AAA clubs and other users of the former auto emergency radio service frequencies. Nevertheless, AAA continues to handle a relatively small number of coordinations every year in order protect its few (but intensively and efficiently used) frequencies from interference.

The numbers tell the true story: this year AAA expects to generate frequency coordination revenues of \$24,000 compared to operating expenses of \$65,000. AAA's expenses have always far exceeded the revenues for this service, and AAA does not expect this to change. In addition, AAA has performed only 65 frequency coordinations so far this year, which is consistent with the 125 to 150 coordinations that it typically performs annually. By comparison, the Personal Communications Industry Association ("PCIA") has already performed more than 8,000 frequency coordinations, twice as many as all of the other Industrial/Business Pool coordinators combined.

AAA is primarily a travel organization, and its main objectives are to ensure highway safety and to provide travel-related services. AAA has absolutely no interest in expanding its small number of frequency coordinations to compete with major frequency coordination organizations or to generate profits in this area.

Indeed, AAA has done nothing to encourage more frequency coordination applications -- it does not advertise this service, it has no electronic application filing mechanism, and it has not changed its fees to attract additional customers.

In sum, AAA performs frequency coordination as a necessary cost of providing emergency road services, and charges a modest frequency coordination fee to cover the computer software, hardware and on-line database costs. AAA has already suggested alternative methods of protecting its frequencies, such as limiting the use of the former auto emergency radio service

frequencies to auto emergency service providers only, that could eliminate or reduce AAA's continuing role as a frequency coordinator. Nevertheless, after more than forty years of experience in coordinating these frequencies for auto emergency providers, AAA believes that it best understands the unique needs of the service providers and that it can best protect the frequencies from interference.

• Myth Two: AAA's petition is really an effort to preserve the job of its full-time frequency coordinator.

Reality: As indicated above, AAA's continuing goal in this proceeding is to protect users of the auto emergency frequencies, not the coordination process, the coordination revenues or a particular coordinator. AAA maintains only one frequency coordinator, who also has many other job responsibilities for AAA. The current frequency coordinator, Gary Ruark, handles all mobile radio communications matters related to emergency road service, and he spends an average of only 12 hours per week on frequency coordination. His day-to-day responsibilities include undertaking short and long-term communications projects for AAA's national call center, advising AAA clubs on both private and commercial frequency solutions, developing nationwide equipment contracts, designing radio communications systems and equipment, planning future communications strategies, and representing AAA with the mobile communications industry and before the FCC.

In short, reducing AAA's frequency coordination role would allow more time for these other important functions. However, AAA is committed to protecting users of the auto emergency channels to the fullest extent possible. Because AAA responds to an emergency road service call every 4.5 seconds, or 80,000 calls per day, it uses radio frequencies more intensively and efficiently than most other users of the Industrial/Business Pool. AAA fears that other coordinators, who may be unfamiliar with the needs of auto emergency users, are more likely to assume more standard usage patterns and make problematic assignments that cause interference on the former auto emergency frequencies. Therefore, while AAA's goal is not simply to protect the job of its frequency coordinator, providing that coordinator with more control over coordinations on the auto emergency frequencies may be the best way to avoid interference problems on those channels.

• Myth Three: Granting AAA's petition would create a "slippery slope," perhaps enabling other private radio users to obtain similar treatment.

**Reality:** The FCC presumably considered, and rejected, the "slippery slope" issue when it first created an exception to the general rules for the petroleum, railroad and utility industries (all of whom, unlike AAA, use their radio frequencies for commercial as well as safety-related purposes). The FCC determined at that time that the two-pool approach created a significant risk of interference for safety-related services within the Industrial/Business Pool that warranted special treatment for services meeting certain criteria. Now that this exception to the general rule is firmly established, AAA cannot be blamed for creating the slippery slope.

As noted in AAA's June 12, 1998 letter to the FCC, AAA has already established that it meets the FCC's own stated criteria for "quasi-public safety" status. The fact that a few entities have applied for similar treatment should not deter the FCC from reviewing each request on its own merits, nor should it diminish the substantial weight of comments filed on behalf of AAA by U.S. Senators Conrad Burns and Byron Dorgan, the National Highway Traffic Safety Administration, National Transportation Safety Board, and more than thirty state and local public safety agencies and officials.

AAA uses its few radio frequencies solely for the purpose of providing emergency road services, responding to more than 80,000 calls every day, one-third of which involve an immediate threat to life or property. Moreover, in the 1997 Balanced Budget Act, Congress expressly acknowledged AAA's public safety role and treats non-commercial road service providers in the same manner as petroleum, utility and railroad companies for the purposes of the auction exemption.

No other entity that is seeking "quasi-public safety" status can cite to these factors, such as Congressional acknowledgment of AAA's public safety role, or AAA's many years of dedicated service as a not-for-profit organization committed to improving highway and vehicle safety. Unlike other entities, AAA can show clear public interest benefits from granting the requested relief, with virtually no impact on the existing Industrial/Business Pool (AAA uses only 43 of the 5,140 frequencies in the pool, or less than one percent). In sum, AAA has clearly distinguished its use of private radio frequencies from the commercial purposes of other applicants for additional protection.

• Myth Four: The FCC's one-day notification requirement will provide sufficient interference protection for the auto emergency frequencies.

**Reality:** The one-day notification process does not and has not assisted AAA with its real or potential interference problems, as noted in AAA's June 12 letter to the FCC. In fact, the notification serves as a *post*-coordination notification rather than a *pre*-coordination notice, so that the frequency coordinator's recommendation is already in the processing pipeline as an acceptable coordination when the notice is received. A frequency coordinator who suspects an

interference problem cannot block the assignment, but bears the burden of beginning a potentially lengthy identification and negotiation process.

In addition, the huge volume of frequency coordinations -- an average of 1,500 to 2,000 every month and often more than 100 in a given day -- precludes effective monitoring of potential interference problems by AAA's frequency coordinator.

Even if the coordination information were available in a user-friendly fashion, many interference problems may not be apparent based on the general information contained in the daily notifications.

The notification process, at least in AAA's case, offers no better protection than "seeking a needle in a haystack." Unfortunately, it has been virtually impossible for AAA to identify a potential interference problem until it is too late. Thus far, AAA has learned of interference problems only when its clubs have reported specific incidents, and it has taken weeks to remedy the interference in some cases.

• Myth Five: AAA does not meet the FCC's "quasi-public safety" criteria because it does not impact hundreds or thousands of people at a time.

**Reality:** AAA serves more than 40 million members, all of whom rely on AAA's emergency road service protection when they use their vehicles. AAA responds to 80,000 emergency calls every day, or one every 4.5 seconds, and one-third of these calls involve immediate threat of safety to life or property. Local public safety agencies also rely on AAA's services to clear roadways during traffic incidents, natural disasters and other emergencies.

The fact that many of these emergencies involve discrete incidents and individuals spread out across the vast U.S. highway system should not minimize the FCC's concern. Indeed, this very fact heightens AAA's need for and intensive use of private radio frequencies in order to serve so many people, many of whom are traveling in unfamiliar and sometimes remote areas. AAA could not meet this enormous challenge without high quality communications.

AAA functions much like utility companies and public safety agencies in the way it responds to many discrete but significant incidents, using similar radio dispatching methods. By comparison, the few petroleum and railroad accidents tend to involve larger groups of affected individuals or property at a specific site. In essence, the petroleum and railroad industries use their frequencies to avoid potentially serious accidents that could affect many people, whereas public safety agencies, the utility industry, and AAA use their frequencies for radio dispatch to respond to many discrete and often serious incidents.

• Myth Six: AAA is seeking "quasi-public safety" status in order to protect its frequencies from spectrum auctions or to obtain additional spectrum.

**Reality:** In the Balanced Budget Act of 1997, Congress already granted non-commercial road service providers, such as AAA, an exemption from spectrum auctions "in recognition of the valuable public safety service provided by emergency road services." H.R. Report 105-217 at 572. While this legislation may be directly relevant to any future AAA spectrum needs, AAA has not asked for additional spectrum in this proceeding and has no immediate plans to make such a request. Instead, AAA is seeking to protect current users of the auto emergency frequencies from interference. Until the FCC resolves AAA's petition, AAA cannot determine the continued viability of its current frequencies and cannot begin to assess its future spectrum needs, if any.

As a not-for-profit organization, AAA has a limited budget available for lobbying issues directly related to its core functions and services. AAA could not continue to pursue its petition in the refarming proceeding unless it served the immediate and/or long-term interests of its members and its local clubs. AAA's clubs continue to urge AAA to advocate this issue on their behalf, and many have written the FCC directly in support of AAA's petition.

AAA and its clubs have a critical need for additional frequency protection to preserve the quality of its auto emergency road services provided to millions of American. Many commenters have already expressed support for AAA's petition for "quasi-public safety" status, and AAA has more than demonstrated its eligibility for this treatment. Therefore, AAA urges the FCC to grant its petition for relief in this proceeding.